

REMARKS/ARGUMENTS

Claims 1-28 are presented for the Examiner's consideration.

Pursuant to 37 C.F.R. § 1.116, reconsideration of the present application in view of the foregoing amendments and the following remarks is respectfully requested.

Initially, Applicants wish to thank the Examiner for her correction of the amendment filed on January 14, 2004, placing the amendment in compliance with 37 CFR 1.121. As indicated on page 2 of the outstanding Office Action, the paragraph after the title and the paragraph on page 9, line 20 have been corrected by the Examiner. In addition; the Examiner indicated that she has removed the quotation marks around the description of the letters used in the drawings. Accordingly, it will be unnecessary for Applicants to make these corrections.

Further, the Examiner indicated that the amendment to page 4, line 7 was not entered. The foregoing amendments to the specification enter the desired change to the paragraph starting on page 4, line 7.

The Examiner objects to the drawings for various reasons. First, the Examiner indicates that no replacement sheets for Figures 1D and 1E were filed and FIGS. 5A-7 are not photomicrographs as described. Filed herewith are replacement drawings for Figures 1D and 1E along with corrected photomicrographs of FIGS. 5A-7. Hence, the attached drawings should overcome this objection.

In a new objection, the Examiner objected to Figures for the following reasons:

1. FIG. 1D' is not present in the Drawings. Applicants point out that the description of FIG. 1D' was inadvertently added in the amendment filed January 14, 2004. The paragraph starting on page 8, line 25, (not page 5, line 25, as indicated in the Official Action) has been corrected by deleting the reference to FIG. 1D'.
2. In FIG. 1A, 70 should be shown as a dashed line. This correction has been made as indicated in the amended FIG. 1A .
3. In FIG. 1E, a line should be provided from 36 (right). It is pointed out that 36 (right) has been changed to 36' and a line has been provided. This has been corrected in FIG. 1E.
4. In FIG. 1D, line 56 should extend to the engagement members and lines and lower line 70 should be dashed. These corrections have been made to the drawings. In addition, the "middle" 72 has been deleted from FIG. 1D.

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5. In FIG. 1F, the quotation mark should be removed. This change has been made, as suggested by the Examiner.

6. FIGS. 1A-1D do not show 56, 58, 44 and 60, as set forth in the paragraph starting at page 7, line 5. In response, Applicants point out that 56 does appear in FIGS. 1A and 1D. In addition, the paragraph starting at page 7, line 5 has been amended to reference FIGS. 2A-2E, which clearly show 58, 44 and 60, as well as 56.

7. In FIGS. 1C, 1D and 1E, 36' is not shown. Applicants point out that 36' is clearly shown in FIG. 1C. FIGS. 1D and 1E have been amended to show 36', by changing one of the figure numerals from "36" to -- 36' --.

8. In FIGS. 2A-2E, figure numerals 110, 112, 114 and 116 are not shown. It is noted that FIGS. 2A-2C' have been amended to indicate where this structure is present. It is also noted that the paragraph starting on page 13, line 16, has been amended to point out that FIGS. 2A-2C' contain the structure defined by figure numerals 110, 112, 114 and 116.

Finally, with respect to the drawings, the Examiner indicates that the sheets, the core and perforation lines are claimed but not shown in the drawings. Applicants have amended FIG. 1F to show the sheets and the core, along with amending the associated text in the specification to indicate where these structures are present. See the amendment to paragraph starting on page 10, line 3. Similarly, FIGS. 1D and 1E have been amended to show perforations on the wings. The associated text of the paragraph starting on page 9, line 20, has also been amended to reflect the changes to the drawings.

Next the Examiner objects to the disclosure of the invention for various reasons. In response, Applicants have adopted all of the Examiner's suggestions, and/or the above-discussed corrections to the drawings should address and overcome each of the Examiner's objections.

It is respectfully submitted that the foregoing comments and/or the corrections to the drawings noted in the attached drawings should overcome the above discussed objections.

The Examiner objected to claims 1-28 as containing informalities. It is respectfully submitted that the foregoing claims are free of any informalities noted by the Examiner. Applicants believe that all of the Examiner's suggestions have been adopted to overcome these informalities.

Claims 1-28 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which is regarded as the invention. This rejection is respectfully **traversed** to the extent that it may apply to the claims, as amended.

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To summarize the Examiner's rejections under 35 U.S.C. § 112, second paragraph, the Examiner finds that:

- 1) It is unclear if the unengaged fastener component is one of the fastener components;
- 2) It is unclear as to the minimum fastener components required;
- 3) It is unclear as to how the fastener components are positioned with regard to the wings;
- 4) There is a lack of antecedent basis for the "engagement section"; and
- 5) In claims 10-16, the preamble and body are inconsistent.

In response, Applicants have amended the claims to clarify that the fastener components throughout each set of claims are those fastener components specified as forming at least a portion of one of the surfaces of the wings. In addition, the claims set forth the location of the fastener component and the cooperating component and the relationship between the fastener component and the cooperating component. Therefore, Applicants respectfully submit that the claims, as amended above, are free of the rejections summarized above as points 1, 2 and 3.

With respect to point 4, Applicants have amended claims 2, 11, and 19 to provide an antecedent basis for the phrase "the engagement section".

With respect to point 5, Applicants have amended claim 10 to reflect that the attachment system does not include the sanitary napkin, i.e. the sanitary napkin requirement is removed from the claimed attachment system.

It is respectfully submitted that claims 1-28 are free from any of the rejections under 35 U.S.C. § 112, second paragraph, set forth by the Examiner in the April 5th Office Action.

Claims 1-28 were rejected under 35 U.S.C. § 102(e), as allegedly being anticipated by Hammons et al., U.S. Patent Application Publication US2003/0004484. This rejection is respectfully **traversed** to the extent that it may apply to the claims, as amended.

Hammons et al. fail to anticipate claims of the present application. Hammons et al. fail to disclose the invention as claimed and clearly cannot support a *prima facie* case of anticipation. While Applicants would agree that Hammons et al. teach that mechanical fasteners may be used, Hammons et al. clearly suggest, by way of the description of the drawings, that adhesive fastening systems are preferred. For example, in the brief description of the drawings, the description of top plan view of the sanitary napkin FIGS. 1, 7, 9, 11 clearly describe the sanitary napkin as having an adhesive on the flaps as the fastening system.

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In addition, there is no teaching within Hammons et al. which directs one skilled in the art to use a mechanical fastening system as claimed. While Hammons et al. teach that mechanical fastening systems may be used, Hammons et al. do not teach that a first fastener component, with its plurality of engagement members, is positioned to engage the undergarment, which the sanitary napkin is designed to protect, as set forth in the present claims 1, 10, 17, 27, and 28. Therefore, the disclosure of Hammons et al. fail to teach all of the claim limitations of the present claims, hence the rejection under 35 U.S.C. § 102(e) is untenable.

To address this deficiency of Hammons et al., the Examiner states that Hammons et al. teach all of the structure of the Applicants' claims and one could conclude that the capabilities, functions and properties of the claimed structure is also inherent. Applicants disagree. For example, in order for the sanitary napkins of Hammons et al. to be able to engage the undergarment positioned between the wings and the backsheet, the fastener component with the engagement members must be placed on the wings or flaps on the side opposite the absorbent, so that when wrapped around the undergarment, as shown in FIG. 6 of Hammons et al., the engagement members will contact the undergarment. However, in the configurations of Hammons et al. purportedly having a first fastener component and a cooperating fastener component on both wings or flaps, i.e., those shown in FIGS. 7-12 of Hammons et al., Hammons et al. fail to teach or suggest that the fastener with the plurality of engagement members should be located on a surface of the wing or flap which will come into contact with the undergarment, in the description of these drawings. (See paragraphs [0121], [0122], and [0123]). In lack of such a teaching, Hammons et al. cannot anticipate the present claims. Therefore, Hammons et al. would not necessarily have the same capabilities, functions and properties of the claimed structure, contrary to the Examiner's contention. Stated another way, Hammons et al. would, at best, suggest that it is not critical to the invention of Hammons et al. where the engagement members of the mechanical fastener are located in the fastening system.

For these reasons, it is respectfully submitted that the rejection under 35 U.S.C. § 102(e) based on Hammons et al. is untenable and should be withdrawn, since all of the claim limitations are not met by Hammons et al.

Claims 1, 6-10, 15-18 and 24-28 were rejected under 35 U.S.C. § 102(b), as allegedly being anticipated by Bien, U.S. Patent 5,704,929 and thus Mattingly, U.S. Patent 4,608,047. This rejection is respectfully **traversed** to the extent that it may apply to the claims, as amended.

Bien fails to disclose the invention as claimed and cannot support a *prima facie* case of anticipation. While it might be argued that Bien discloses use of a mechanical fastening system on the wings of a sanitary napkin by its reference to Mattingly, both Bien and Mattingly lack a specific teaching

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of having a first fastener component having a plurality of engagement members and a cooperating fastener component on different surfaces of both wings or flaps of the sanitary napkin, such that the first fastener component is positioned on the wings or flaps in a manner which allows the first fastener component on one wing or flap to engage the undergarment positioned between the wings or flaps and the backsheet.

In the statement of the rejections, it is rather clear that the Examiner is reading more into the teachings of Mattingly than actually exist in Mattingly. Specifically the Examiner states on page 7, paragraph 10 of the Office Action:

"It is noted that portions of Mattingly are considered to teach that the cohesive structure in Figure 10 could be adhesive or VELCRO [sic, VELCRO®] instead, i.e. the fastener components is the one fastener directly adjacent exterior [sic, the exterior] of the undergarment".

To support this statement, the Examiner relies on column 6, line 44 – column 7, line 5, column 2, lines 17-32 and column 8, lines 9-41 of Mattingly.

This statement is overly broad and goes beyond the teachings of Mattingly. Nothing in Mattingly suggests that the VELCRO® system can be used in a configuration shown in Figure 10 of Mattingly. A careful review of the sections of Mattingly noted by the Examiner reveals the following: 1. Mattingly suggests that mechanical attachment means may be used, in addition to adhesive and cohesive means to attach the flaps to one another; 2. The cohesive means is shown in Figure 10 of Mattingly; and 3. The mechanical means is shown in Figure 11 of Mattingly. Specifically, column 6, line 61-column 7, line 5 states:

"Still other means for affixing the flaps in place will occur to those skilled in the art such as, for example, replacing the adhesive system with cohesive material, i.e., material capable of adhering to itself but not to other substrates. In this way both sides of the **flap may be coated with cohesive material 34'** as illustrated in FIG. 10, and no unique order of folding is required. This also carries the advantage that there is no adhesive applied to the outer crotch portion of the undergarment. In still another embodiment, **mating elements of hooks 35 and loops 35'**, the so-called Velcro binder system (Velcro is a trademark of Velcro USA, Inc.) may be employed. **This is illustrated in FIG. 11.**" (emphasis added)

Clearly, the above quoted passage shows if a cohesive system is used, it is to be used in the configuration of Figure 10 and if a Velcro® is used, it is used in the configuration of Figure 11. Nothing in Mattingly states or teaches that the a Velcro® system can be used in the configuration of Figure 10, as the Examiner has stated or implies. Therefore, the Examiner's premise for the rejection is unsupported by the actual teachings of Mattingly.

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For this reason, not to mention that not all of the structure of the present claims is taught by Bien and Mattingly, as argued by the Examiner, the Examiner has not established *prima facie* case of anticipation. In order for a rejection under 35 U.S.C. § 102 (b) to be tenable, all of the limitations of the claims must be taught by a prior art reference. Since, the configuration of the fastener components, as claimed, are not taught by Bien (incorporating Mattingly), the rejection under 35 U.S.C. § 102(b) base on Bien is untenable and should be withdraw

Claims 4-5, 13-14 and 22-23 were rejected under 35 U.S.C. § 103(a), as allegedly being unpatentable over by Bien, U.S. Patent 5,704,929 in view of Leak et al. U.S. Patent 5,763,041. This rejection is respectfully **traversed** to the extent that it may apply to the claims, as amended.

As is noted above, both Bien and Mattingly lack a specific teaching of having a first fastener component having a plurality of engagement members and a cooperating fastener component on different surfaces of both wings or flaps of the sanitary napkin, such that the first fastener component is positioned on the wings or flaps in a manner which allows the first fastener component on one wing or flap to engage the undergarment positioned between the wings or flaps and the backsheet. Leak et al. fail to cure this fatal deficiency of Bien.

Leak et al. is directed to laminates suited for use as the loop components of hook and loop fasteners. According to Leak et al., a conventional separate, discrete patch of loop material is undesirable. See Leak et al. at col. 9, lines 15-22. While it might be argued that Leak et al. teach that its laminate can be used as a loop component anywhere hook and loop fasteners are employed, Leak et al. specifically teach replacing a conventional, discrete patch of loop material such as taught by Mattingly with a laminate that forms the outer cover of a diaper to provide engagement at any location on the outer surface of the diaper. However, Leak et al. fail to suggest having a first fastener component having a plurality of engagement members and a cooperating fastener component on different surfaces of both wings or flaps of the sanitary napkin, such that the first fastener component is positioned on the wings or flaps in a manner which allows the first fastener component on one wing or flap to engage the undergarment positioned between the wings or flaps and the backsheet.

In order for a combination of references to establish a *prima facie* case of obviousness, the combination of references must teach the invention, as a whole, including all of the limitations of the claims. See In re Royka, 180 USPQ 580 (CCPA 1974). If a given combination of references does not anticipate, in the case of Bien and Mattingly as discussed above, or render obvious, in the case of Bien and Mattingly combined with Leak et al., the limitations of the independent claims, then any claim depending from the independent claim is nonobvious. See In re Fine, 5 USPQ2d 1596 (Fed. Cir. 1988).

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Given that Leak et al. fail to cure the noted deficiencies of Bien, the obviousness rejection under 35 U.S.C. § 103(a) based on the combination of Bien with Leak et al. is untenable and should be withdrawn.

Claims 2-3, 11-12 and 19-21 stand rejected under 35 U.S.C. 103 as being unpatentable by U.S. Patent 5,704,929 to Bien in view of U.S. Patent 5,723,884 to Osborn, III et al. Applicants respectfully **traverse** this rejection to the extent it might apply to the claims, as amended.

As is noted above, both Bien and Mattingly lack a specific teaching of having a first fastener component having a plurality of engagement members and a cooperating fastener component on different surfaces of both wings or flaps of the sanitary napkin, such that the first fastener component is positioned on the wings or flaps in a manner which allows the first fastener component on one wing or flap to engage the undergarment positioned between the wings or flaps and the backsheet. Further, Bien lacks the teaching of having a first fastener component on both wings or flaps with a cooperating fastener component on both wings or flaps, one of which is capable of interengaging one of the first fasteners. Osborn, III et al. fail to cure these deficiencies of Bien.

The portion of Osborn, III et al. relied upon by the Examiner, Figures 44-45, teach placing a hook material on the wings or flaps to engage the undergarment. However, Osborn, III et al. fail to teach that the hook material can engage the other flap, in particular a cooperating fastener on the other flap, as required by the present claims. Further, the hooks of Osborn, III et al. are located and designed to engage the elastic of the undergarment, as is set forth in column 50, line 55 - column 53, line 39. Osborn, III et al. do not teach having the flaps or wings contact each other such that one mechanical fastener will engage with a cooperating fastener on the other wing or flap.

In order to establish a *prima facie* case of obviousness, there must be some motivation or suggestion to modify the references and there must be some reasonable expectation for success. Given that the function of the flaps or wings in Osborn, III et al. is to physically attach the flaps or wings to the undergarment, without overlapping the flaps or wings, and the function of the flaps or wings in Bien (Mattingly) is to surround the undergarment without physical attachment, the purposes of the wings or flaps in Bien and Osborn, III et al. are different and one skilled in the art would not have been motivated to combine the teaching of Bien with Osborn, III et al., as the Examiner has done.

Claims 1-28 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 and claims 1-48 of copending Application No. 10/37,277 (published Application No. 2003/0036740) and Application No. 10/037,287 (published Application No. 2003/0045856).

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Applicants respectfully request this rejection be held in abeyance with respect to the present application until such time that allowable subject matter is identified.

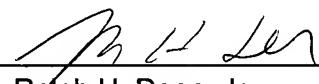
Applicants further point out that the claims of copending Application No. 10/37,277 (published Application No. 2003/0036740) have been amended to be limited to the process of attaching the sanitary napkin to an undergarment. In addition, the Examiner has required a restriction requirement in copending Application No. 10/037,287 (published Application No. 2003/0045856). At this time, the scope of these claims has not been determined. Hence, Applicants respectfully submit that the provisions double patenting based on copending Application No. 10/37,277 (published Application No. 2003/0036740) has been overcome by the amendment to the claims in this application.

For the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: 920-721-3892.

Respectfully submitted,
HAMMONDS ET AL.

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CERTIFICATE OF MAILING

I, Judith M. Anderson, hereby certify that on July 28, 2004 this document is being deposited with the United States Postal Service as first-class mail, postage prepaid, in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

By: 
Judith M. Anderson